BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DACIA L. CHAMBERS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,052,100
WESLEY MEDICAL CENTER	)	
Respondent	)	
AND	)	
	)	
ACE AMERICAN INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the August 10, 2011, Award entered by Administrative Law Judge (ALJ) Thomas Klein. The Workers Compensation Board heard oral argument on December 1, 2011. The Director appointed E. L. Lee Kinch of Wichita, Kansas, to serve as a Board Member Pro Tem in this matter in place of former Board Member Julie Sample. As of October 31, 2011, Ms. Sample has been replaced on the Board by Mr. Gary R. Terrill. However, due to a conflict, Mr. Terrill has recused himself from this appeal. Accordingly, Mr. Kinch will continue to serve as a Board Member Pro Tem in this case.

APPEARANCES

Dale V. Slape of Wichita, Kansas, appeared for claimant. Anton C. Andersen of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument before the Board the parties stipulated that if the Board determined claimant suffered a work disability: (1) From the date of accident until claimant's employment with respondent was terminated (June 1, 2009, through February 10, 2010), claimant's average weekly wage (AWW) without fringe benefits was $267.37 and (2) Claimant's AWW commencing February 11, 2010, which includes fringe benefits, is $358.28. The parties also stipulated at oral argument before the Board that

claimant suffered a 5% permanent functional impairment to the body as a whole as the result of her cervical spine injury. However, the parties disagree as to whether claimant has a work disability and whether claimant also suffered a permanent functional impairment of the right shoulder.

ISSUES

This is a claim for a June 1, 2009, accident. In the August 10, 2011, Award, ALJ Klein determined that claimant sustained a 9% whole body functional impairment which includes the shoulder after averaging the opinions of Dr. George G. Fluter and Dr. John P. Estivo and, further, a 59.65% work disability based upon a 19.3% task loss and a 100% wage loss. The ALJ then awarded claimant permanent partial disability benefits based upon the 59.65% work disability.

Respondent contends that under a strict reading of K.S.A. 44-510e and K.S.A. 44-508(d) given claimant's voluntary resignation from a position paying a comparable wage, claimant's award should be limited to her whole body functional impairment, which it asserts is 5% and not 9% as determined by the ALJ. If the Board should find that claimant is entitled to a work disability, respondent asserts claimant's task loss is 3.4%, based upon Dr. John P. Estivo's testimony. Respondent also argues that the Board should recalculate claimant's award to not include fringe benefits in claimant's average weekly wage given that claimant voluntarily terminated her employment. Claimant maintains the ALJ's Award should be affirmed. She cites *Bergstrom*[1] in support of her entitlement to an award of work disability benefits.

The issue before the Board on this appeal is:

What is the nature and extent of claimant's disability? Specifically the following must be resolved:

1. What is claimant's permanent functional impairment? While the parties agree that claimant sustained a 5% permanent impairment to the body as a whole as a result of her cervical spine injury, respondent disputes that claimant suffered any permanent impairment of the right shoulder.

2. What is claimant's work disability? Respondent argues claimant's task loss is 3.4%, as opined by Dr. Estivo, while claimant asserts Dr. Fluter's task loss opinion of 35.2% should be adopted. However, the greatest discordance between the parties concerns the amount of claimant's post-injury wage loss. Respondent asserts that after claimant was injured, she continued earning the same wages she was earning on the date of accident. She subsequently voluntarily quit her employment. Therefore, claimant

[1] *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 214 P.3d 676 (2009).

suffered no wage loss. In the alternative, the value of the fringe benefits should not be included in claimant's AWW. Claimant contends she had a 100% wage loss commencing February 11, 2010, after her employment with respondent was terminated.

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

The parties stipulated that claimant met with personal injury by accident on June 1, 2009, arising out of and in the course of her employment with respondent. On June 1, 2009, claimant was moving a patient, when the patient fell on top of her. She immediately reported the accident and was referred to Dr. Mark Dobyns, who treated claimant for complaints of cervical spine pain. She also complained to Dr. Dobyns of having right shoulder pain. Dr. Dobyns diagnosed claimant with a possible right shoulder sprain. He ordered an MRI of the cervical spine which revealed a bulge at C3-4 and C5-6. Dr. Dobyns imposed temporary restrictions upon claimant. After prescribing medications and physical therapy, Dr. Dobyns referred claimant to Dr. Amitabh Goel.

Claimant was seen by Dr. Goel on August 7, 2009, for a consultation regarding neck pain into the right scapular region and intermittently down the right upper extremity. Dr. Goel felt that claimant had cervical radiculopathy and referred claimant to Dr. Sandra Barrett, who saw claimant on September 10, 2009. Claimant initially complained to Dr. Barrett of pain to the lower cervical spine as well as the upper thoracic region radiating over the parascapular region into her upper extremities. Claimant also complained that at times she had numbness in her right hand. At her second visit with Dr. Barrett on October 21, 2009, claimant complained of right-sided cervical spine pain into the right shoulder. At Dr. Barrett's recommendation, claimant received three epidural injections in the cervical spine from Dr. Chandra Tokala. Dr. Barrett diagnosed claimant with ongoing myofascial neck and shoulder pain. On February 26, 2010, Dr. Barrett indicated claimant reached maximum medical improvement.[2]

At respondent's request, claimant saw Dr. John P. Estivo, an orthopedic surgeon, on April 30, 2010. Claimant gave a history of injuring herself while assisting in lifting a patient into bed while working for respondent. Claimant reported pulling her right arm in the accident and having burning pain in the right trapezius area. She also reported some tingling in her right arm to Dr. Estivo, but denied thoracic or lumbar spine pain. Dr. Estivo reviewed the records of Drs. Dobyns, Goel and Barrett. He reviewed the MRI of claimant's

[2] The medical reports of Drs. Dobyns, Goel, Barrett and Tokala were not made part of the record. Information regarding their treatment of claimant was gleaned from the reports of Drs. John P. Estivo and George G. Fluter.

cervical spine ordered by Dr. Dobyns and concluded that claimant had a mild bulge at C3-4 and C5-6.

Dr. Estivo conducted an extensive physical examination of claimant. His examination revealed the tenderness in claimant's right shoulder was localized to the right trapezius. His report indicated that with respect to claimant's right shoulder: negative drop arm, negative Yergason, negative apprehension sign, negative Hawkins, negative Speed's and no instability. The subacromial space of the right shoulder was nontender. Dr. Estivo opined claimant had no bursitis or tendinitis in claimant's right shoulder.

Dr. Estivo placed claimant in DRE Category II of the AMA *Guides*[3] for her cervical spine and gave her a 5% permanent impairment to the body as a whole. He did not assign claimant a permanent impairment for her right shoulder. Dr. Estivo gave claimant a permanent restriction of occasional overhead work. Dr. Estivo opined claimant could no longer perform 2 of 59 non-duplicative job tasks identified by vocational rehabilitation specialist Steve Benjamin for a 3.4% task loss.

Claimant was seen at the request of her attorney by Dr. George G. Fluter on September 15, 2010. The history claimant gave Dr. Fluter as to how the accident occurred was virtually the same as what she gave Dr. Estivo. Claimant reported she had pain affecting the neck/upper back, middle back and right shoulder girdle. She also reported experiencing numbness/dysesthesia in the fingers of the right hand. Dr. Fluter reviewed the medical records of Drs. Dobyns, Goel, Tokala and Barrett. He also reviewed the MRI of claimant's cervical spine ordered by Dr. Dobyns.

Dr. Fluter measured claimant's cervical range of motion and determined it was limited in all planes with pain. He found shoulder impingement testing was equivocally positive on the right (pain affecting the upper back and shoulder girdle). Dr. Fluter also measured claimant's right shoulder range of motion and determined it was limited. He attributed the limitations in her range of motion to tendinitis/bursitis.[4] Using Figure 38 (page 3/43), Figure 41 (page 3/44) and Figure 44 (page 3/45) of the AMA *Guides*, he assigned claimant a 13% permanent partial impairment to the right upper extremity at the level of the shoulder for range of motion deficits. Using Table 3 (page 3/20) of the AMA *Guides*, claimant's right shoulder impairment converted to an 8% permanent partial impairment to the body as a whole.

Dr. Fluter acknowledged there were no records showing an objective or structural basis for her limitation of movement in the right shoulder. When Dr. Fluter palpated

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[3] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

[4] Fluter Depo. at 24-26.

claimant's shoulder to elicit pain, she had minimal complaints of pain. Dr. Fluter was asked why his examination showed claimant had significantly less range of motion than did Dr. Estivo's examination. Dr. Fluter's response was that he had no explanation other than if a person's range of motion is tested while receiving physical therapy, that the person may have "a little bit greater range of motion."[5]

Dr. Fluter placed claimant in DRE Category II pursuant to the AMA *Guides* for her cervical spine and gave her a 5% permanent partial impairment to the body as a whole related to myofascial pain. Using the Combined Values Chart (page 322) of the AMA *Guides*, Dr. Fluter indicated claimant's right shoulder and cervical impairments combine for a 13% permanent partial impairment to the body as a whole.

Claimant was given the following restrictions by Dr. Fluter: restrict lifting, carrying, pushing and pulling to 35 pounds occasionally and 15 pounds frequently, physical demand level between light and medium; avoid holding the head and neck in awkward and/or extreme positions; restrict overhead activities to an occasional basis; and restrict activities at or above shoulder level using the right arm to an occasional basis. Based upon these restrictions, Dr. Fluter opined that claimant could no longer perform 18 of 51 non-duplicative job tasks identified by vocational personnel consultant Jerry D. Hardin for a task loss of 35.2%.

Claimant acknowledged that she voluntarily quit her job with respondent in February 2010.[6] She called in sick one day and never went back. Claimant has not been employed since working for respondent. Nikki Freeman, the director of human resources for respondent, testified that claimant did not return to work as scheduled on February 4, 2010.[7] On February 10, 2010, Ms. Freeman sent a letter by certified mail to claimant, informing claimant that she had been terminated. Ms. Freeman testified that respondent accommodated claimant's temporary restrictions and would have continued accommodating claimant's restrictions had claimant not quit her employment.

In his Award, the ALJ gave equal weight to the opinions of Drs. Estivo and Fluter. The ALJ determined claimant sustained a 9% whole body functional impairment after averaging the opinions of these physicians. Averaging the task loss opinions provided by Drs. Estivo and Fluter, the ALJ found claimant had a 59.65% work disability based upon a 19.3% task loss and a 100% wage loss. The ALJ then awarded claimant permanent partial disability benefits based upon the 59.65% work disability.

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[5] *Id.*, at 29.

[6] R.H. Trans. at 16-17.

[7] Freeman Depo. at 13.

PRINCIPLES OF LAW

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.[8] The existence, nature and extent of the disability of an injured workman is a question of fact.[9] A workers compensation claimant's testimony alone is sufficient evidence of the claimant's physical condition.[10] The finder of fact is free to consider all the evidence and decide for itself the percent of disability the claimant suffers.[11]

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has the responsibility of making its own determination.[12] Medical evidence is not essential to the establishment of the existence, nature and extent of an injured worker's disability.[13]

K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510e(a) states in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged

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[8] K.S.A. 2008 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

[9] *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995).

[10] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

[11] *Carter v. Koch Engineering*, 12 Kan. App. 2d 74, 76, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

[12] *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

[13] *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

> together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

In *Bergstrom*[14] the Kansas Supreme Court overturned the requirement that a claimant must make a good-faith effort to find alternate employment after an injury and stated:

> When a workers compensation statute is plain and unambiguous, the courts must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statutory language is clear, there is no need to resort to statutory construction.
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> A history of incorrectly decided cases does not compel the Supreme Court to disregard plain statutory language and to perpetuate incorrect analysis of workers compensation statutes. The court is not inexorably bound by precedent, and it will reject rules that were originally erroneous or are no longer sound.

In *Tyler*[15] the Kansas Court of Appeals stated: "Our Supreme Court's direction in *Bergstrom* could not be clearer. Absent a specific statutory provision requiring a nexus between the wage loss and the injury, this court is not to read into the statute such a requirement."

In *Osborn*[16] the Kansas Court of Appeals reversed the Board's Order imputing a post-injury wage where it was determined the claimant failed to make a good-faith job search. The respondent argued the case was factually distinguishable from *Bergstrom* because the claimant in *Bergstrom* was directed to stop working by a physician whereas

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[14] *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, Syl. ¶¶ 1, 2, 214 P.3d 676 (2009).

[15] *Tyler v. Goodyear Tire & Rubber Co.,* 43 Kan. App. 2d 386, 391, 224 P.3d 1197 (2010).

[16] *Osborn v. U.S.D. 450*, 2010 WL 4977119, Kansas Court of Appeals unpublished opinion filed Nov. 12, 2010 (No. 102,674).

the claimant in *Osborn* voluntarily quit an accommodated job. Further, the respondent argued there must be a causal connection between the wage loss and the injury. The Court of Appeals rejected both arguments, noting there is nothing in K.S.A. 44-510e that permits the fact finder to impute a wage. Citing *Bergstrom* and *Tyler*, the Kansas Court of Appeals reiterated that there is no requirement for a claimant to prove a causal connection between the injury and the job loss.[17]

In *Criswell*[18] the claimant, a school custodian, was discharged by respondent for placing a dozen roses in a student's locker. The Kansas Court of Appeals in *Criswell* stated:

> *Bergstrom* specifically states that an employee's work disability award is calculated under K.S.A. 44-510e(a) by averaging the employee's postinjury wage loss percentage with the employee's task loss percentage. The reason for the employee's postinjury wage loss is irrelevant. *Bergstrom*, 289 Kan. at 608-10; see *Butler v. Cessna Aircraft Co.*, No. 103,965, 2011 WL 2205238, at *1-3 (Kan.App.2011) (unpublished opinion).
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> Furthermore, in *Tyler v. Goodyear Tire & Rubber Co.*, 43 Kan.App.2d 386, 391, 224 P.3d 1197 (2010), this court found that '[a]bsent a specific statutory provision requiring a nexus between the wage loss and the injury, this court is not to read into the statute such a requirement.'

ANALYSIS

The ALJ found the opinions of Drs. Estivo and Fluter concerning claimant's functional impairment to be credible and balanced the two opinions, finding claimant has a 9% functional impairment to the body as a whole. The parties agree claimant has a 5% functional impairment to the body as a whole as a result of her cervical spine injury. Claimant asserts she also has a functional impairment to the right shoulder, which respondent disputes. Dr. Dobyns was the first physician claimant saw for her injuries. The first time claimant saw Dr. Dobyns, she complained of right shoulder pain. Dr. Barrett diagnosed claimant with myofascial neck and shoulder pain. Dr. Fluter's assessment was that claimant had right shoulder pain with probable tendinitis/bursitis. Conversely, Dr. Estivo determined claimant did not have tendinitis or bursitis in her right shoulder and found she had no right shoulder functional impairment. Percipiently, the ALJ gave equal weight to the opinions of Drs. Estivo and Fluter. The Board affirms the ALJ's finding that claimant has a 9% functional impairment to the body as a whole.

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[17] See also *Serratos v. Cessna Aircraft Company*, 2011 WL 2637449, Kansas Court of Appeals unpublished opinion filed July 1, 2011 (No. 104,106); *Guzman v. Dold Foods, LLC*, 2010 WL 1253714, Kansas Court of Appeals unpublished opinion filed March 26, 2010 (No. 102,139).

[18] *Criswell v. U.S.D. 497*, 2011 WL 5526549, Kansas Court of Appeals unpublished opinion filed Nov. 10, 2011 (No. 104,517).

The opinions of Drs. Estivo and Fluter concerning claimant's task loss were also found by the ALJ to be credible. The ALJ averaged the 3.4% task loss opinion of Dr. Estivo and the 35.2% task loss opinion of Dr. Fluter for a finding that claimant has a 19.3% task loss. The Board concurs. Dr. Estivo gave claimant one restriction of occasional overhead work. The restrictions that Dr. Fluter gave claimant were more extensive. The restrictions both physicians gave claimant and their opinions concerning claimant's task loss are reasonable and both are entitled to approximately equal weight.

At oral argument before the Board, respondent's counsel devoted much of his time arguing that claimant suffered no wage loss. Following her injury, claimant was given temporary restrictions. Respondent provided claimant with an accommodated job. On February 4, 2010, claimant simply did not return to work after previously calling in sick. Although respondent sent claimant a letter terminating her employment on February 10, 2010, claimant acknowledged that she voluntarily quit her job. Claimant reached maximum medical improvement on February 26, 2010. Respondent presented evidence that it would try to accommodate any restrictions given to claimant by her doctors. Respondent asserts that because claimant's pre-injury and post-injury wages were the same, she suffered no wage loss. Additionally, respondent argues claimant's wage loss was caused by her voluntarily quitting her job, an action unrelated to her injury.

In his brief, respondent's counsel correctly states *Bergstrom* requires that "'when a statute is plain and unambiguous, the court must give effect to the legislative intention as expressed in the statutory language.'"[19] K.S.A. 44-510e mandates that permanent partial disability shall be calculated by averaging claimant's task loss with ". . . the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury." Respondent argues that if one applies the plain and unambiguous language of K.S.A. 44-510e to the current claim, then claimant suffered no wage loss.

While respondent's argument has logic, it ignores other critical language contained in *Bergstrom* and the stream of cases propagated by *Bergstrom.* The Kansas Supreme Court in *Bergstrom* clearly stated: "The legislature did not state that the employee is required to *attempt to work* or that the employee *is capable of engaging in work* for wages equal to 90% or more of the preinjury average gross weekly wage."[20]

In *Osborn,* the Kansas Court of Appeals found the claimant had a 100% post-injury wage loss when she voluntarily quit her job. Respondent attempts to distinguish the facts in *Osborn* from the facts in the current claim. In *Osborn*, the claimant quit her job, citing continued problems with her knee and back and stated that the demands of her job made

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[19] Respondent's Brief at 6 (filed Sept. 23, 2011).

[20] *Bergstrom*, 289 Kan. at 610.

it impossible to follow her medical restrictions. However, she also quit because her house was up for sale and her husband had moved to another city. In the current claim, as in *Osborn*, claimant voluntarily quit her job.

The Kansas Supreme Court in *Bergstrom* cited *Gasswint*[21] and *Lowmaster*[22] as cases where the good-faith rule was erroneously applied. In *Gasswint*, the claimant was discharged for submitting medical mileage claims for physical therapy appointments she did not attend. In *Lowmaster*, the claimant had pain in her wrists and was provided wrist splints by a company-referred physician. After returning to work for two days wearing the wrist splints, the claimant quit her job. The court found the claimant was capable of doing her job and that her employer was willing to provide her with accommodated work. Therefore, the claimant did not make a good-faith effort to return to work and was found to be capable of earning 90% of her pre-injury wage. *Bergstrom* rejected the good-faith rule and overturned *Gasswint* and *Lowmaster*. Simply put, since *Bergstrom*, the Kansas appellate courts have consistently ruled that K.S.A. 44-510e does not require an employee to attempt to work following his or her injury in order to incur a wage loss.

The Board empathizes with respondent and employers who are required to pay permanent partial disability benefits, based in part upon a 100% wage loss, where a former employee has been discharged for committing a grievous act or inexcusably quits his or her job. In the present claim, respondent went so far as to accommodate claimant's restrictions. Nonetheless, the Board is obligated to follow the precedent set by *Bergstrom* and the subsequent cases it spawned. Therefore, the Board finds that claimant has a 100% wage loss. Averaging claimant's 100% wage loss and 19.3% task loss, as required by K.S.A. 44-510e, results in a 59.65% work disability.

CONCLUSION

1. From the date of accident until claimant's employment with respondent was terminated (June 1, 2009, through February 10, 2010), claimant's average weekly wage (AWW) without fringe benefits was $267.37.

2. Claimant's AWW commencing February 11, 2010, which includes fringe benefits, is $358.28.

3. Claimant has a 9% permanent functional impairment to the body as a whole as the result of her cervical spine and right shoulder injuries.

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[21] *Gasswint v. Superior Industries Int'l-Kansas, Inc.*, 39 Kan. App. 2d 553, 185 P.3d 284 (2008).

[22] *Lowmaster v. Modine Mfg. Co.*, 25 Kan. App. 2d 215, 219, 962 P.2d 1100, *rev. denied* 265 Kan. 885 (1998).

4. Claimant suffered a task loss of 19.3%, and beginning February 11, 2010, suffered a 100% wage loss. This results in a work disability of 59.65% commencing February 11, 2010.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.[23] Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board modifies the August 10, 2011, Award entered by ALJ Klein as follows:

Dacia L. Chambers is granted compensation from Wesley Medical Center and its insurance carrier for a June 1, 2009, accident and resulting disability. Ms. Chambers is entitled to receive the following disability benefits:

Based upon an average weekly wage of $267.37, for the period ending February 10, 2010, Ms. Chambers is entitled to receive 36.29 weeks of permanent partial general disability benefits at $178.26 per week, or $6,469.06, for a 9% permanent partial general disability.

Based upon an average weekly wage of $358.28, for the period commencing February 11, 2010, Ms. Chambers is entitled to receive 211.26 weeks of permanent partial general disability benefits at $238.87 per week, or $50,463.68, for a 59.65% permanent partial general disability. The total award is $56,932.74.

As of January 3, 2012, Ms. Chambers is entitled to receive 36.29 weeks of permanent partial general disability compensation at $178.26 per week in the sum of $6,469.06, plus 98.86 weeks of permanent partial general disability compensation at $238.87 per week in the sum of $23,614.69, for a total due and owing of $30,083.75, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of $26,848.99 shall be paid at $238.87 per week until paid or until further order of the Director.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

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[23] K.S.A. 2010 Supp. 44-555c(k).

Dated this ____ day of January, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge